

Endorsement on Professional Conduct Record

LYNDON ARTHUR BEST

(Cranbrook)

Called to the Bar: June 29, 1972

In late 1981 \$53,482 was paid into Court, representing the proceeds of sale of a piece of property held by Mr. and Mrs. D.

On December 3, 1982 Mr. and Mrs. D entered into a separation agreement which provided in part that Mrs. D would receive the monies held in Court plus accrued interest. Mrs. D would transfer her interest in the matrimonial home to Mr. D, who in turn would grant to her a second mortgage in the amount of \$22,343 less the interest payable on the funds held in Court.

Mr. Best acted for Mrs. D; U acted for Mr. D. On December 23, 1982 U sent to Mr. Best the transfer documents respecting the matrimonial home and a Consent to Pay the funds in Court to Mrs. D. These documents were sent to Mr. Best on his undertaking to return an executed copy of the separation agreement, an executed Transfer of an Estate in Fee Simple and a Court receipt for the monies held in Court.

On February 23, 1983 Mr. Best met with U and delivered to him the executed documents on U's undertaking not to register the Transfer of Estate in Fee Simple until the mortgage back to Mrs. D was executed concurrently with the transfer.

At the same time Mr. Best agreed to file the Consent to Pay order releasing the funds held in Court into his trust account, on his undertaking not to pay those funds out until the registration of the transfer was complete. On February 28, 1983 U wrote to Mr. Best confirming those agreements and the latter's undertaking not to pay out the funds until registration of the transfer was complete.

During the next several months both counsel attempted to resolve disputes between Mr. and Mrs. D respecting distribution of certain chattels.

In late May 1983 U discovered that Mr. Best had paid out to Mrs. D the funds he was holding in trust, without the registration of the transfer having been completed.

Mr. Best admitted that he paid out the funds in the mistaken belief that he was at liberty to do so because the decree nisi had been entered and because U was in possession of all necessary documents to protect his client. He conceded that he had not reviewed his file prior to paying out the funds, and had forgotten about his undertaking set out in U's letter for February 28, 1983.

Mr. Best subsequently released U from his undertakings, the property was transferred into Mr. D's name, and the mortgage back to Mrs. D was registered in the amount agreed upon less \$435, being the value of chattels which Mrs. D refused to return.

Mr. Best admitted that his breach of undertaking, although inadvertent, constituted professional misconduct.

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